

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

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In re: : **Chapter 11**
: **CIRCUIT CITY STORES, INC., et al.,** : **Case No. 08-35653 (KRH)**
: **Jointly Administered**
:
Debtors. : -----X-----

**UNITED STATES DEBT RECOVERY LLC'S MOTION FOR LEAVE TO
INCLUDE ARGUMENTS OF COUNSEL IN RECORD ON APPEAL**

United States Debt Recovery LLC (“USDR”) files this Motion pursuant to Local Rule 8006-1 to include arguments of counsel in the record on appeal, stating as follows:

Procedural History

1. On November 10, 2008 (the “Petition Date”), Circuit City Stores, Inc. and its affiliated debtors (together, the “Debtors”) filed voluntary petitions in the Bankruptcy Court for relief under Chapter 11 of the bankruptcy court, thereby initiating the above-styled jointly-administered cases.
2. On November 12, 2008, the Bankruptcy Court entered its Order Establishing Bar Date For Filing Administrative Expense requests under Bankruptcy Code § 503(b)(9) – i.e., claims for goods delivered to the Debtors in the 20 days preceding the filing of the Debtors’ bankruptcy petitions.

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3. Signature Home Furnishings Co. Inc. (“Signature”) timely filed a proof of claim with the Debtors’ claims agent, which was assigned claim number 778. Signature’s proof of claim asserts, without limitation, a claim under Bankruptcy Code § 503(b)(9) in the amount of \$17,930.14 (the “§ 503(b)(9) Claim”).

4. On or about June 4, 2009, Signature sold, transferred, and assigned the § 503(b)(9) Claim to USDR. Pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure, notice of such claim assignment was provided by the claims agent, and following such notice USDR became the holder of the § 503(b)(9) Claim (Docket No. 5128).

5. On or about June 5, 2009, USDR filed an amended claim, which was assigned claim number 13210, that reduced the dollar amount of the § 503(b)(9) Claim to \$17,548.92.

6. On October 13, 2009, the Debtors filed an objection to USDR’s 503(b)(9) Claim (the “Fifty-First Omnibus Objection”). See Document Nos. 5214 and 5215. The Fifty-First Omnibus Objection sought to reduce the 503(b)(9) Claim to zero based on alleged preference payments to USDR. On the same date, the Debtors filed a separate objection (the “Fifty-Second Omnibus Objection”), which sought the same relief, on the same grounds, with respect to many of the other 503(b)(9) claims that have been filed against the Debtor.

7. USDR filed a timely Response to the Fifty-First Omnibus Objection (“USDR’s Opposition”).

8. Many other parties also filed responses in opposition to the First-First Omnibus Objection or the Fifty-Second Omnibus Objection.

9. On November 12, 2009, the Court held an initial hearing on the Fifty-First Omnibus Objection and the Fifty-Second Omnibus Objection (the “Omnibus Objection Hearing”). At such hearing, numerous counsel appeared on behalf of the many parties who had

filed responses in opposition to the Fifty-First Omnibus Objection or the Fifty-Second Omnibus Objection and presented legal argument to the Court.

10. On January 6, 2010, the Court entered an Order on Debtors' Fifty-First and Fifty-Second Omnibus Objections ("Order"), accompanied by a Memorandum Opinion ("Memorandum Opinion" or "Opinion"). See Document No. 6228. The Order partially sustained the Fifty-First Omnibus Objection and Fifty-Second Omnibus Objection, ordering that "Debtors may apply 11 U.S.C. § 502(d) to temporarily disallow the claims filed by Respondents under 11 U.S.C. § 503(b)(9) ... up to the amount potentially recoverable on account of preferential transfers allegedly avoidable under 11 U.S.C. § 547" and "Respondents' § 503(b)(9) claims identified in the Objections are temporarily disallowed." Order 1-3.

11. USDR has timely filed a Notice of Appeal of the Order, a Motion for Leave to Appeal from the Order, and Notice of such motion.

Relief Requested and Basis Therefor

12. USDR requests leave of Court to include in the record on appeal all arguments of all counsel recorded in the transcript of Omnibus Objection Hearing. The transcript was originally filed on the docket on November 18, 2009, as Docket Number 5813, and a Corrected Transcript was filed on November 19, 2009, as Docket Number 5837.

13. This Court's Local Rule 8006-1(A) provides that "unless otherwise directed by the Court, the record on appeal in any matter shall not include counsel's opening statement or arguments of counsel, including arguments of counsel on motions."

14. The Omnibus Objection Hearing was comprised entirely of arguments on legal issues, and this Court rendered its opinion based solely on such issues. There was no evidence presented at the hearing, and the Court's opinion does not include any findings of fact.

Therefore, the arguments presented at the Omnibus Objection Hearing are central to the Court's ruling and the appellate court's understanding and review thereof.

WHEREFORE, USDR requests (a) that the Court enter an Order granting this Motion and providing leave to include the arguments of counsel presented at the Omnibus Objection Hearing in the record on appeal, and (b) such other and further relief as the Court deems appropriate.

UNITED STATES DEBT RECOVERY LLC

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Certificate of Service

I hereby certify that on March 9, 2010, I caused a copy of the foregoing Motion for Leave to be served on those listed below, who together constitute all necessary parties, by first class mail, postage prepaid, and by email (where an email address is shown below):

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